IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 32230 of 2007(J)

AGAINST THE ORDER IN IA.2970/2007 IN OS.108/2006 of PRINCIPAL SUB COURT,PARAVUR

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PETITIONER:

KERALA KUMAR, S/O. M.N.KRISHNAN BHATTATHIRIPPAD, MULLAMANGALATH MANA, VADAKKEKAD POST, CHAVAKKAD TALUK.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENT:

K.P.SATHYANATHAN NAIR, S/O. PARAMESWARAN PILLAI, CONCERT O' CASTLE, PANAMPILLY NAGAR, ERNAKULAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.32230 of 2007

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Dated this the 30th day of October, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside Ext.P6 order whereby the Subordinate Judge, North Paravur refused to issue a Commission for measurement of the property. Learned Subordinate Judge held thus: "It is contended that since it is a suit for specific performance and in the absence of a clause for centage value a C.R. as prayed in the I.A. is not required for the just decision of this case." But the said statement does not appear to be correct on account of the following recitals in the agreement. The last sentence of the agreement clearly states that if on measurement, the extent of the property is less than 6 acres and 18 cents there has to be proportionate reduction in the sale consideration. It has to be held that the agreement to purchase the property measuring 6 acres and 18 cents for a consideration of Rs.60 lakhs and when there is a reduction in the

extent, there is an agreement for the proportionate reduction. So, the total extent of the property has necessarily to be found out when there is a dispute regarding the same. Therefore, the refusal to issue a Commission is not correct.

2. Therefore, the order under challenge is set aside and the petition is allowed and the court below is directed to issue a Commission for measuring the property. Needless to say that both sides be permitted to file work memo before the Commissioner regarding the points which they want to be noted by the Commissioner. It is also submitted that there is a likelihood of settlement. The court below also may consider the same and take necessary steps.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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